

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No. 03-O-00177-PEM (03-O-04736);
)	
CHARLES MARTIN BARRETT,)	00-O-11344 (00-O-11344;
)	00-O-13095; 01-O-04911;
Member No. 94800,)	02-O-10908; 02-O-14026;
)	02-O-15325)
A Member of the State Bar.)	
)	DECISION AND ORDER
)	SEALING DOCUMENTS
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I. Introduction

After respondent **Charles Martin Barrett** reached a Second Amended Stipulation Re Facts and Conclusions of Law and an Addendum to Second Amended Stipulation (stipulation) with the Office of the Chief Trial Counsel of the State Bar of California (State Bar), this court approved the stipulation and accepted respondent as a participant in the State Bar Court’s Alternative Discipline Program (ADP).¹ (Rules Proc. of State Bar, rules 800-807.)

As set forth below in greater detail, respondent has successfully completed the ADP. Accordingly, pursuant to rule 803 of the Rules of Procedure of the State Bar,² the court hereby recommends that respondent be suspended from the practice of law for three years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution be stayed, and that respondent be placed on probation for three years with conditions, including an actual suspension of one year and restitution.

¹At the time respondent was admitted it was known as the State Bar Court’s Pilot Program for Respondents with Substance Abuse and Mental Health Issues.

²References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

Because respondent was placed on inactive status for one year beginning January 14, 2008, it is also recommended that he receive credit for the period of inactive enrollment towards any period of actual suspension to be imposed by the Supreme Court. (Bus. & Prof. Code, § 6233.)

II. Significant Procedural History

On February 10, 2003, after an extensive evaluation process, respondent entered into a five-year participation agreement with the Lawyer Assistance Program (LAP) to assist in his recovery process from substance abuse, including alcohol and prescription drugs.

On August 27, 2003, the parties submitted the second amended stipulation for purposes of respondent's participation in the ADP for case No. 00-O-11344 et al. (Rules Proc. of State Bar, rule 802(a).) At the same time, this court issued its Decision Re Alternative Recommendations for Degree of Discipline (August 27, 2003 Decision) pursuant to rule 803(a). After considering the court's disciplinary recommendations, respondent elected to participate in the ADP. Following the execution of a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (contract), this court accepted respondent into the ADP on August 27, 2003.³

On April 5, 2004, the parties submitted an addendum to the second amended stipulation for case No. 03-O-00177 et al. At that time this court issued its Amended Decision Re Alternative Recommendations for Degree of Discipline (April 5, 2004 Amended Decision) pursuant to rule 803(a) which superceded the August 27, 2003 Decision. Respondent also signed an April 5, 2004 amended contract.

Respondent elected to serve the recommended level of discipline of one year actual suspension prior to his successful completion of the ADP. On January 14, 2008, respondent requested to be enrolled as an inactive member of the State Bar for one year under Business and Professions Code section 6233. By order of the court, he was then placed on inactive status from January 14, 2008. Thus, he should receive credit for the period of his inactive enrollment towards any period of actual suspension to be imposed by the Supreme Court. (Bus. & Prof. Code, § 6233.)

³ At that time the contract was known as the Contract and Waiver for Participation in the Sate Bar Court's Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

On January 31, 2008 , this court found that respondent successfully completed the ADP and ordered that the second amended stipulation be filed. The court indicated that it would issue this decision recommending the lower level of discipline reflected in the April 5, 2004 Amended Decision. Because the court had inadvertently omitted to order the addendum to second amended stipulation lodged April 5, 2004, be filed, it is hereby ordered that the addendum be retroactively filed as of January 31, 2008.

III. Findings of Fact and Conclusions of Law

The Seconded Amended Stipulation Re Facts and Conclusions of Law and the Addendum to Second Amended Stipulation (stipulation) approved by the court and filed on January 31, 2008, are incorporated by reference as if set forth fully herein.

In the stipulation, respondent admitted that he committed misconduct in eight client matters, including (1) failing to competently perform the legal services for which he was retained in willful violation of rule 3-110(A) of the Rules of Professional Conduct; (2) committing acts of moral turpitude in violation of Business and Professions Code section 6106;⁴ (3) appearing without authority in violation of section 6104; (4) failing to communicate with clients in willful violation of section 6068, subdivision (m); (5) failing to promptly return client files and refund unearned fees in violation of rule 3-700(D)(2) of the Rules of Professional Conduct; and (6) violating the conditions of his probation in an earlier disciplinary proceeding in violation of section 6068, subdivision (k), by failing to make restitution of more than \$25,000 to a client. Respondent's misconduct in these various matters occurred between approximately January 1996 and early 2003.

In aggravation of respondent's misconduct in the current proceeding, the parties have stipulated that respondent has a record of prior discipline in three previous matters. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)⁵ In case No. 92-O-13806, respondent received a private reproof, effective January 21, 1994, pursuant to a stipulation

⁴References to section are to the provisions of the Business and Professions Code, unless otherwise noted.

⁵All further references to standards are to this source.

in which he admitted to willful violations of rule 3-110(A) [failure to competently perform legal services] and rule 3-700(A)(2) [improper withdrawal from employment] of the Rules of Professional Conduct in one client matter. The misconduct in this matter occurred in 1991.

In case No. 92-O-13946, respondent received a public reproof, effective August 9, 1995, pursuant to a stipulation in which he admitted to a willful violation of rule 3-110(A) of the Rules of Professional Conduct and a violation of section 6068, subdivision (m) [failure to adequately communicate with client] in one client matter. The misconduct in this matter occurred in 1992.

Finally, in case No. 97-O-10268 (Supreme Court case No. S074111), effective January 23, 1999, the Supreme Court suspended respondent from the practice of law for a period of two years, stayed execution of the suspension and placed him on probation for a period of three years with conditions. Respondent was also ordered, during the period of probation, to make restitution to two clients in the total amount of \$28,078.68, plus interest. In that proceeding, respondent admitted to willful violations of rule 3-110(A) of the Rules of Professional Conduct and section 6068, subdivision (m), in two client matters. Respondent's misconduct in those two client matters occurred in 1994 and 1996.

In further aggravation, the parties have stipulated that (1) respondent engaged in multiple acts of misconduct (standard 1.2(b)(ii)); (2) significant harm was suffered by three of respondent's clients as a result of his misconduct—because causes of action were lost in two matters and the client's family home was lost in the third matter and respondent discharged a malpractice judgment of \$140,000 through bankruptcy in one of the client matters (standard 1.2(b)(iv)); and (3) respondent failed to pay any of the more than \$25,000 in restitution to one of his former clients ordered by the Supreme Court, effective January 23, 1999, in respondent's most recent prior disciplinary proceeding and failed to respond to communications from his former clients' attorney regarding the restitution (standard 1.2(b)(v)).

In mitigation, the parties stipulated that respondent displayed candor and cooperation to the State Bar during its disciplinary investigation. (Standard 1.2(e)(v).)

Additionally, the parties have indicated, in mitigation, that respondent has signed a participation agreement with the LAP and has been cooperative. In 2002, respondent contacted LAP

and completed the intake process. On December 12, 2002, respondent signed a release of information to be considered by LAP for long-term participation. Respondent cooperated with that assessment process, and entered into the long-term participation plan on February 10, 2003. He has remained in full compliance with LAP since his first contact with the program. His participation requirements included attending weekly LAP group meetings.

According to the documentation reviewed by this court, respondent was admitted to a chemical dependency treatment program on an outpatient basis in August 1994. He maintained sobriety from August 1994 until late 1995, at which time he began the intermittent use of mood-altering, prescription medication and escalated to the frequent use of prescription medication and weekly alcohol use within a period of approximately six months. From mid-1996 until 1997, respondent used either prescription drugs or alcohol to excess from four to six times per week. From 1997 until January 19, 2002, respondent's prescription drug use escalated to the extent that he was using prescription or over-the-counter substances daily and was consuming alcohol two to three times per week. He has not used alcohol or mood-altering medications since January 20, 2002.

Based upon the foregoing, the court finds that respondent has adequately established a nexus between his substance abuse problems and his misconduct in both the current proceeding and the disciplinary proceeding in Supreme Court case No. S074111 (State Bar Court case No. 97-O-10268). The misconduct in these matters occurred in 1994 and from 1996 through October 2001.

On October 18, 2007, the LAP submitted to the court for respondent a Certificate of Completion of the Lawyer Assistance Program (Certificate). (Rules Proc. of State Bar, rule 804.) The Certificate from a mental health professional confirms that respondent has complied with all requirements set forth in his LAP Participation Agreement/Plan for at least one year and has maintained mental health stability during this period. In the instant matter, respondent's certificate also confirms that he has been in compliance with LAP for five years.

In addition to participating in LAP, respondent was accepted into the ADP as a result of his misconduct in this matter. Respondent fully complied with all terms and conditions of the program.

Rule 804 provides that a respondent must participate in the ADP for a period of 36 months, and that the court may shorten the time to not less than 18 months with earned incentives.

Accordingly, on January 31, 2008, the court found that respondent successfully completed the ADP.

Respondent is entitled to significant mitigating credit for his participation in LAP and his successful completion of the ADP.

In addition to his successful completion of the ADP, respondent has made substantial payments toward his restitution in the above entitled matters.

IV. Degree of Discipline

In determining the appropriate disposition in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.) Standard 1.6(b) provides that the specific discipline for a particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In considering the discipline that should be recommended in this proceeding, the court has reviewed a number of cases involving conduct similar to the conduct of which respondent has been found culpable in the current proceeding.

In *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, the State Bar Court Review Department found an attorney culpable of failure to competently perform the legal services for which he was retained in three separate matters, causing significant harm to the clients in at least two of the matters. The attorney was also found culpable of making misrepresentations to two of the clients regarding the status of their matters. Although the attorney had no prior record of discipline, he had only been admitted to practice for about six years prior to the commencement of his misconduct. The Review Department recommended that the attorney be suspended from the practice of law for a period of three years, that execution of the suspension be stayed and that the attorney be placed on probation for three years on conditions that included his actual suspension for the first one year of the period of probation.

In *Pineda v. State Bar* (1989) 49 Cal.3d 753, the Supreme Court found the attorney culpable

of multiple acts of misconduct in seven client matters, including failure to competently perform legal services, failure to refund unearned fees, failure to communicate, failure to return files and documents and, in one instance, misappropriated settlement funds he had retained for the payment of a medical lien. The attorney had no record of prior discipline but had only been admitted to practice for about four years prior to the commencement of his misconduct. The Supreme Court suspended the attorney for a period of five years, stayed execution of the suspension and placed him on probation for five years on conditions that included his actual suspension for the first two years of the probationary period.

In *Hawes v. State Bar* (1990) 51 Cal.3d 587, the Supreme Court found the attorney culpable of failure to competently perform the legal services for which he was retained in six client matters. In addition, the attorney was found culpable in some of the client matters of failure to communicate, failure to refund unearned fees, failure to promptly return client files and failure to pay sanctions imposed by the court. The attorney had no record of prior discipline in approximately eleven years of practice prior to the commencement of his misconduct. In mitigation, the Supreme Court found that the attorney had a substance abuse problem with both alcohol and methamphetamines and, additionally, was diagnosed in 1984 as having bipolar affective disorder. The attorney had been in recovery from his substance abuse problems and had been regularly taking his medicine for the bipolar affective disorder since October 1986. Nevertheless, the Supreme Court suspended the attorney for a period of five years, stayed execution of the suspension and placed him on probation for a period of five years on conditions that included his actual suspension for the first year of the probationary period.

In the present case, respondent has a record of prior discipline in three matters involving four clients. Most significantly, in the most recent prior proceeding, despite his stipulation that he would make restitution of more than \$28,000 over a period of three years to his clients in one matter, respondent failed to make *any* of the agreed-upon restitution. In light of his misconduct in the current proceeding, respondent now must make restitution, plus accrued interest, to five clients in a total amount exceeding \$75,000. The court views the facts and circumstances in this case as more serious than the misconduct in *Peterson*, *Pineda* or *Hawes*. Nevertheless, respondent's successful

completion of the ADP and the LAP, and his significant restitution payment while in ADP and LAP, the court will recommend a disposition that is consistent with the discipline imposed in *Hawes*, including a one-year actual suspension.

V. Recommendation

IT IS HEREBY RECOMMENDED that respondent **CHARLES MARTIN BARRETT** be suspended from the practice of law for a period of three years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of such suspension be stayed and that respondent be placed on probation for a period of three years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of the period of probation, with credit toward the period of actual suspension given for the period of inactive enrollment which commenced on January 14, 2008;
2. During the period of probation, respondent must make restitution to the following individuals in the indicated amounts:
 - (a) To **Scott and Lorraine Seidenstricker** in the amount of \$25,078.68, plus 10% interest per annum from January 1, 1998 (or to the Client Security Fund to the extent of any payment from the fund to Scott and Lorraine Seidenstricker, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof of such restitution to the State Bar's Office of Probation;⁴
 - (b) To **Doug and Linda Wilkinson** in the principal amount of \$20,000, plus 10% interest per annum from January 1, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Doug and Linda Wilkinson, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish

⁴ It should be noted that respondent has made substantial, if not all, restitution to the Client Security Fund. However, this court is unclear as to how much is still owing. The Office of Probation and the Client Security Fund must re-calculate how much restitution is still owed.

satisfactory proof of such restitution to the State Bar's Office of Probation;

- (c) To **Charles Justice** in the amount of \$21,700, plus 10% interest per annum from January 1, 1998 (or to the Client Security Fund to the extent of any payment from the fund to Charles Justice, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof of such restitution to the State Bar's Office of Probation;
- (d) To **Ashley Williams** in the amount of \$750, plus 10% interest per annum from May 1, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Ashley Williams, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof of such restitution to the State Bar's Office of Probation; and
- (e) To **Ola Barrett** in the amount of \$1,500, plus 10% interest per annum from August 1, 2001 (or to the Client Security Fund to the extent of any payment from the fund to Ola Barrett, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof of such restitution to the State Bar's Office of Probation.⁵

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

- 3. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
- 4. Within ten (10) days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report

⁵As part of his participation in the ADP, respondent was required to make quarterly restitution payments to satisfy these obligations and he so did. Accordingly, the amounts owed must be recalculated by the Office of Probation.

any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;

5. Respondent must comply with all provisions and conditions of his Participation Agreement with the Lawyer Assistance Program;
6. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions apply and no later than the last day of said period;
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;
8. Within one (1) year of the effective date of this Decision, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School, and of his passage of the test given at the end of that session; and
9. The period during which these conditions apply will commence on the effective date of the Order of the Supreme Court imposing discipline in this proceeding.

This court does not recommend that respondent be required to take and pass the Multistate Professional Responsibility Examination (MPRE) because he has previously taken and passed the MPRE as part of the discipline imposed in Supreme Court case No. S074111 (State Bar Court case No. 97-O-10268).

It is recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, from the effective date of the Supreme Court order in this proceeding.

Finally, it is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order Sealing Documents

In the course of determining respondent's eligibility for participation in the ADP, and while respondent was participating in the ADP, various documents were submitted to the court for review under confidential cover, including reports and evaluations by mental health professionals and respondent's recommended treatment for participation in the LAP. Pursuant to Business and Professions Code section 6234, subdivision (a), and rule 806 of the Rules of Procedure of the State Bar, all information concerning the nature and extent of a respondent's treatment is absolutely confidential and is not to be disclosed to the public absent an express written waiver by the respondent.

ACCORDINGLY, the court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under rule 23 of the Rules of Procedure.

FURTHERMORE, the following documents are to remain confidential and sealed:

1. All reports and evaluations by mental health professionals that were submitted to the court as part of respondent's participation in the Alternative Discipline Program.
2. All information concerning the nature and extent of respondent's treatment provided by the LAP, including, but not limited to, participation reports, application agreements and participation agreements; and the amended contract.
3. The Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program and the amended contract.

IT IS FURTHER ORDERED that the foregoing protected and sealed material will only be

disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: April ____, 2008

PAT McELROY
Judge of the State Bar Court